MITCHELL | HAMLINE School of Law

William Mitchell Law Review

Volume 36 | Issue 1 Article 6

2009

Criminal Law: Minnesota Formally Adopts the Teague Retroactivity Standard for State Post-Conviction Proceedings—Danforth v. State

Zorislav R. Leyderman

CRIMINAL LAW: MINNESOTA FORMALLY ADOPTS THE *TEAGUE* RETROACTIVITY STANDARD FOR STATE POST-CONVICTION PROCEEDINGS—*DANFORTH V. STATE*

Zorislav R. Leyderman†

I. INTRODUCTION

When a court announces a new rule of constitutional criminal procedure, one question immediately follows: does the new rule

† J.D. Candidate, 2010, William Mitchell College of Law; B.A., 2005, Political Science and Psychology, University of Minnesota. The author wishes to thank Violetta Babaeva for her continued encouragement, understanding, and support. The author also wishes to thank Ellen M. Ahrens, Executive Editor, and the *William Mitchell Law Review* staff for their assistance with this project.

apply to litigants negatively affected by the "old rule?"[1] For the past two hundred years, the answer to this question was simple and straightforward—yes.[2] In 1965, however, the U.S. Supreme Court abandoned the traditional analysis and adopted a case-by-case approach for determining the retroactivity[3] of new rules of constitutional criminal procedure.[4] In the 1989 case of *Teague v. Lane*, the Court revisited the doctrine of retroactivity and announced that new rules of constitutional criminal procedure would, as a general rule, not apply retroactively.[5]

Although the *Teague* rule was specifically designed for, and limited to, cases on federal habeas review, a few states, including Minnesota, incorrectly interpreted *Teague* as binding on state courts in state post-conviction proceedings.[6] In 2006, Stephen

1. *See* Mary C. Hutton, *Retroactivity in the States: The Impact of* Teague v. Lane *on State Postconviction Remedies*, 44 ALA. L. REV. 421, 421–22 (1993) (discussing the implications of new rules). "The question of retroactivity is what to do when the law changes. More precisely, it is to whom the new law should be applied, and to whom the old." Kermit Roosevelt III, *A Little Theory is a Dangerous Thing: The Myth of Adjudicative Retroactivity*, 31 CONN. L. REV. 1075, 1075 (1999). *See generally* 21 C.J.S. *Courts* § 204 (2009) (providing a brief overview of the American retroactivity doctrine); S. R. Shapiro, Annotation, *Prospective or Retroactive Operation of Overruling Decision*, 10 A.L.R.3d 1371 (1966) (providing a detailed overview of the American retroactivity doctrine in both criminal and civil applications).

2. Matthew R. Doherty, Note, *The Reluctance Towards Retroactivity: The Retroactive Application of Laws in Death Penalty Collateral Review Cases*, 39 VAL. U. L. REV. 445, 450–52 (2004) (discussing the common law approach to retroactivity).

3. "A decision is retro[active] if it applies to causes of action accruing before the decision." 21 C.J.S. *Courts* § 204 (2009).

> A ruling that does not apply even to the parties before the court in the case in which the ruling is issued is purely prospective. A decision has limited prospective effect if the rule announced applies retroactively to the parties before the court and also to those litigants whose claims were pending at the time of the decision announcing the new rule, but prospectively to all others.

Id.(footnotes omitted). For a detailed discussion of relevant definitions, specifically in the context of criminal procedure, see *State v. Baird*, 654 N.W.2d 105, 111 n.5 (Minn. 2002).

4. Linkletter v. Walker, 381 U.S. 618, 629 (1965).

5. 489 U.S. 288, 310 (1989).

6. Danforth v. Minnesota, 128 S. Ct. 1029, 1042 n.17 (2008). As Justice Stevens emphasized in *Danforth*, *Teague* was decided under the federal habeas statute and, therefore, is not binding on state courts. *Id.*

> It is . . . abundantly clear that the *Teague* rule of nonretroactivity was fashioned to achieve the goals of federal habeas while minimizing federal intrusion into state criminal proceedings. It was intended to limit the authority of federal courts to overturn state convictions—not to limit a state court's authority to grant relief for violations of new rules of constitutional law when reviewing its own State's convictions.

Danforth, seeking post-conviction relief, urged the Minnesota Supreme Court to abandon the *Teague* test and adopt an alternative approach.[7] The Minnesota Supreme Court rejected Danforth's argument, holding that it was required to follow *Teague*'s retroactivity standard.[8] The U.S. Supreme Court sided with Danforth and reversed and remanded, holding that states were free to develop their own retroactivity approaches for state post-conviction proceedings.[9] On remand, the Minnesota Supreme Court again rejected Danforth's arguments and decided to retain the *Teague* retroactivity approach for state post-conviction proceedings.[10] Thus, the Minnesota Supreme Court decided to formally adopt a retroactivity standard that was not designed for state post-conviction application.[11]

This note first traces the history of the federal retroactivity doctrine, from the English common law to the U.S. Supreme Court's latest decision in *Danforth*.[12] Next, this note discusses the history and development of the retroactivity doctrine in the State of Minnesota.[13] Then, this note discusses the facts and holding[14] and provides an analysis of the Minnesota Supreme Court's final decision in *Danforth v. State*.[15] This note goes on to suggest that the Minnesota Supreme Court should accept the Supreme Court's invitation to develop a retroactivity standard that is responsive to the goals and purpose of Minnesota's post-conviction proceedings[16] and provides a number of alternatives that can be adopted in *Teague*'s place.[17] Finally, this note concludes that the Minnesota Supreme Court should adopt a modified, broader version of the *Teague* retroactivity standard because it will best serve the goals and purpose of state post-conviction review.[18]

Id. at 1041. The Court also noted that following *Teague*, the majority of state courts interpreted *Teague* as binding only on federal habeas courts. *Id.* at 1042. Minnesota is one of only three states that interpreted *Teague* as binding on state courts. *Id.* n.17.

7. Danforth v. State, 761 N.W.2d 493, 495 (Minn. 2009).
8. *Id.* at 494.
9. *Danforth*, 128 S. Ct. at 1041–42.
10. *Danforth*, 761 N.W.2d at 494.
11. *See Danforth*, 128 S. Ct. at 1041.
12. *See infra* Part II.A.
13. *See infra* Part II.B.
14. *See infra* Part III.
15. *See infra* Part IV.
16. *See infra* Part IV.A.
17. *See infra* Part IV.B.
18. *See infra* Parts IV.C and V.

II. HISTORY

A. *Development and History of the Federal Retroactivity Doctrine*

1. *Retroactivity at Common Law*

The origins of retroactivity and its basic principles can be traced back to the English common law.[19] Under common law, newly announced rules were applied retroactively to all subsequent cases, without distinguishing between cases on direct and collateral review.[20] As Professor LaFave points out in his treatise, "At common law there was no authority supporting the proposition that judicial decisions made law only for the future."[21]

The common law approach to retroactivity was based on Blackstone's declaratory theory of law,[22] stating that "the duty of the court was not to 'pronounce a new law, but to maintain and expound the old one.'"[23] Under this approach, the judge does not create new law, but rather "discover[s] what the true law is and . . . expose[s] the misinterpretation that formerly governed."[24] Because courts did not create the law but merely discovered it, a court's overruling of a prior decision was simply viewed as a correction of a prior misunderstanding of the law.[25] Accordingly, the overruled decision was never the law, and the newly announced rule, having been the law all along, must be applied retroactively.[26]

The U.S. Supreme Court adopted this approach,[27] and, until

19. *See* Linkletter v. Walker, 381 U.S. 618, 622 (1965). The *Linkletter* Court began its analysis by reviewing the history of retroactivity, noting that "[w]hile to some it may seem 'academic' it might be helpful to others . . . ." *Id.*

20. Doherty, *supra* note 2, at 450 (discussing retroactivity at common law); *see also Linkletter*, 381 U.S. at 622 ("At common law there was no authority for the proposition that judicial decisions made law only for the future."); Kuhn v. Fairmont Coal Co., 215 U.S. 349, 372 (1910) (Holmes, J., dissenting) ("Judicial decisions have had retrospective operation for near a thousand years.").

21. 6 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 11.5 (4th ed. 2008).

22. *Linkletter*, 381 U.S. at 623 n.7 ("While Blackstone is always cited as the foremost exponent of the declaratory theory, a very similar view was stated by Sir Matthew Hale in his History of the Common Law which was published 13 years before the birth of Blackstone.").

23. *Id.* at 622–23 (quoting 1 BLACKSTONE, COMMENTARIES 69 (15th ed. 1809)).

24. Hutton, *supra* note 1, at 425 (discussing Blackstone's theory of law).

25. *See id.* (discussing Blackstone's theory of law).

26. *See id.* ("In accordance with this theory, any 'new rule' has to be applied retroactively because it represents what the law has been all along.").

27. *See* Danforth v. Minnesota, 128 S. Ct. 1029, 1036 (2008) ("[U]ntil 1965

1965, new rules of constitutional criminal procedure were consistently applied to all cases coming before the Court on habeas review.[28] As one commentator noted, "[t]here was no question of which laws should be retroactive, or whom they would be retroactive to, because the law was always applied retroactively."[29] In his article attacking the *Linkletter* decision, Professor James Haddad correctly pointed out that prior to 1965, "the Court's practice *always* had been to apply new constitutional decisions retroactively and *never* did a majority opinion even consider that something less would be permissible."[30] Even the *Linkletter* court admitted that "[i]t is true that heretofore, without discussion, we have applied new constitutional rules to cases finalized before the promulgation of the [new] rule."[31] As such, the common law approach to retroactivity was relatively straight-forward and provided courts with a bright-line, easily applicable rule of automatic retroactivity.[32]

By 1965, however, the legal realism movement, based on John Austin's theory of law,[33] had emerged and was gaining popularity

the Court continued to construe every constitutional error, including newly announced ones, as entitling state prisoners to relief on federal habeas."); Linkletter v. Walker, 381 U.S. 618, 622 (1965). ("The Blackstonian view ruled English jurisprudence and cast its shadow over our own . . . .").

28. *Danforth*, 128 S. Ct. at 1036 (Until 1965, "'[n]ew' constitutional rules of criminal procedure were, without discussion or analysis, routinely applied to cases on habeas review."); *see also* LAFAVE, *supra* note 21, § 11.5 ("This common law position took hold in this country, so that it was generally assumed that all judicial decisions were fully retroactive."); Ann N. Bosse, *Retroactivity and the Supreme Court*, 41 MD. B.J. 30, 30 (2008) ("Until . . . 1965, new rules of criminal procedure were routinely applied to all cases - past, present, and to come.").

29. Doherty, *supra* note 2, at 451 (discussing retroactivity at common law).

30. James B. Haddad, *"Retroactivity Should Be Rethought": A Call for the End of the* Linkletter *Doctrine*, 60 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 417, 425 (1969).

31. *Linkletter* 381 U.S. at 628. Prior to 1965, "the thought that a decision of the United States Supreme Court declarative of constitutional rights might be nonretroactive was never seriously entertained." LAFAVE, *supra* note 21, § 11.5.

32. *See* Doherty, *supra* note 2, at 451 (discussing retroactivity at common law). At common law, "questions of retroactivity were easy, indeed, invisible." Roosevelt, *supra* note 1, at 1077–78 (discussing retroactivity at common law). As some commentators argue, the Court's rejection of the common law automatic retroactivity doctrine during the last half of the twentieth century has created confusion and inconsistency. *See* Christopher S. Strauss, Comment, *Collateral Damage: How the Supreme Court's Retroactivity Doctrine Affects Federal Drug Prisoners' Apprendi Claims on Collateral Review,* 81 N.C. L. REV. 1220, 1222 (2003) (discussing the Court's current retroactivity doctrine and stating that over the past thirty-six years, the Court has been struggling with a retroactivity doctrine that is "theoretically incoherent" and "difficult to apply").

33. *Linkletter*, 381 U.S. at 624 (discussing Austin's theory of law); *see also*

among scholars and practitioners.[34] Austin argued that "judges do in fact do something more than discover law; they make it interstitially by filling in with judicial interpretation the vague, indefinite, or generic statutory or common-law terms that alone are but the empty crevices of the law."[35] Under this theory, overruled decisions are considered valid law until overruled, and newly announced rules of law do not apply retroactively to decisions made final prior to the announcement of the new rule.[36]

Relying on the theory of legal realism, some scholars challenged the common law approach to retroactivity.[37] Critics argued that the common law approach was "out of tune with actuality" because judicial repeal of what was thought to be the law could often "work hardship to those who had trusted to its existence."[38] As for the members of the Court, Justice Frankfurter was the first to suggest, in 1956, that new rules of constitutional criminal procedure should not be applied retroactively.[39] Concurring in *Griffin v. Illinois*,[40] Justice Frankfurter argued that the "law generally speaks prospectively. . . . We should not indulge in the fiction that the law now announced has always been the law . . . . It is much more conducive to law's self-respect to recognize candidly the considerations that give prospective content to a new pronouncement of law."[41] Similarly, in 1958, Justices Harlan and Whittaker renewed Justice Frankfurter's proposal and urged the Court to adopt a prospective-only application of the rule announced in *Griffin*.[42] In *Eskridge v. Washington State Board of Prison Terms and Paroles*,[43] Justices Harlan and Whittaker argued that *Griffin*, decided in 1956, should not be applied retroactively to a defendant convicted in 1935.[44]

Charles Leonard Scalise, *A Clear Break from the Clear Break Exception of Retroactivity Analysis:* Griffith v. Kentucky, 73 IOWA L. REV. 473, 476-77 (1988) (discussing Austin's theory of law and its gaining popularity).

34. *See* Doherty, *supra* note 2, at 451 (discussing retroactivity at common law). *See also Linkletter*, 381 U.S. at 624 (discussing cases applying Austin's theory of legal realism).

35. *Linkletter*, 381 U.S. at 623–24.

36. *Id.* at 624.

37. LAFAVE, *supra* note 21, § 11.5.

38. *Linkletter*, 381 U.S. at 624 (quotations omitted).

39. Haddad, *supra* note 30, at 420.

40. 351 U.S. 12 (1956).

41. *Id.* at 26 (Frankfurter, J., concurring).

42. Haddad, *supra* note 30, at 420.

43. 357 U.S. 214 (1958).

44. *Id.* at 216 (Harlan, J. & Whittaker. J., dissenting).

Five years later, in *Pickelsimer v. Wainwright*,[45] Justice Harlan once again voiced his discontent with automatic retroactivity.[46] In a brief, two-sentence per curiam opinion, the *Pickelsimer* Court remanded ten Florida cases for reconsideration in light of *Gideon v. Wainwright*.[47] Dissatisfied with the Court's "summary disposition" of ten Florida cases, Justice Harlan urged the Court to "deal definitively with th[e] important and far-reaching subject" of retroactivity.[48] As these examples demonstrate, by 1965, Blackstone's legal principles, the driving force behind American retroactivity jurisprudence, were under attack by supporters of Austin's legal realism.[49]

2. *Automatic Retroactivity Abandoned:* Linkletter v. Walker

In the 1965 decision of *Linkletter v. Walker*,[50] the U.S. Supreme Court "expressly [addressed] the issue of retroactivity for the first time."[51] As Justice Clark explained in the first paragraph of the Court's opinion, the Court granted certiorari to resolve "what has become a most troublesome question in the administration of justice."[52] The issue in *Linkletter* was whether the exclusionary rule announced in the landmark decision of *Mapp v. Ohio*[53] applied retroactively to cases finally decided prior to *Mapp*.[54] As the Court noted, "A split of authority ha[d] developed in the various courts of appeals concerning the retrospectivity of Mapp."[55] Citing a long

45. 375 U.S. 2 (1963).

46. *Id.* at 3 (Harlan, J., dissenting).

47. *Id.* at 2–3.

48. *Id.* at 3–4 (Harlan, J., dissenting). "[I]t seems to me that the question whether the States are constitutionally required to apply the new rule retrospectively, which may well require the reopening of cases long since finally adjudicated . . . is one that should be decided only after informed and deliberate consideration." *Id.* at 3. "Surely no general answer is to be found in 'the fiction that the law now announced has always been the law.'" *Id.* (quoting Griffin v. Illinois, 351 U.S. 12, 26 (1956) (Frankfurter, J., concurring)).

49. *See* Linkletter v. Walker, 381 U.S. 618, 623–24 (1965). By 1965, Austin's theory of legal realism had also been recognized by the U.S. Supreme Court and a number of state courts. Francis X. Beytagh, *Ten Years of Non-Retroactivity: A Critique and a Proposal*, 61 VA. L. REV. 1557, 1560 (1975) (discussing growing judicial support of Austin's legal realism).

50. *Linkletter*, 381 U.S. at 618.

51. Danforth v. Minnesota, 128 S. Ct. 1029, 1036 (2008).

52. *Linkletter*, 381 U.S. at 620.

53. 367 U.S. 643 (1961). *Mapp* held that the exclusionary rule was binding on state courts as a remedy for Fourth Amendment violations. *Id.* at 655.

54. *Linkletter*, 381 U.S. at 619-20.

55. *Id.* at 620 n.2.

list of conflicting cases, the Court stated that, "About the only point upon which there was agreement in the cases cited was that our opinion in Mapp did not foreclose the question" of retroactivity of *Mapp*.[56]

The "prospect of upsetting 'thousands' of final state court convictions in order to apply the exclusionary rule was too much," forcing the *Linkletter* court to abandon "centuries of adherence to a strict rule of retroactivity."[57] Ensuring that *Mapp* would not apply retroactively,[58] *Linkletter* held that the retroactivity of new rules of constitutional criminal procedure should be determined on a case-by-case basis under a three-part test.[59] As the Court explained, the retroactivity of new rules would be determined by weighing "the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation."[60] Thus, *Linkletter* abandoned the historic rule of automatic retroactivity[61] and adopted the modern doctrine of "prospectivity."[62] In other words, new rules of constitutional criminal procedure would no longer enjoy automatic retroactive effect.[63]

The *Linkletter* decision was immediately criticized for its practical and theoretic shortcomings.[64] The first attack came from

56. *Id.*

57. Christopher N. Lasch, *The Future of* Teague *Retroactivity, or "Redressability," After* Danforth v. Minnesota*: Why Lower Courts Should Give Retroactive Effect to New Constitutional Rules of Criminal Procedure in Postconviction Proceedings*, 46 AM. CRIM. L. REV. 1, 11 (2009) (discussing the *Linkletter* decision).

58. *Id.* at 12. If applied retroactively, *Mapp* would overburden state criminal justice systems: "Hearings would have to be held in large numbers. Guilty men would go free either because the States did not have the resources to carry the defense against claims of unlawful seizures to a successful conclusion or because essential evidence *had* been unlawfully seized and offered at trial." Haddad, *supra* note 30, at 422 (discussing the *Mapp* decision).

59. *Linkletter*, 381 U.S. at 629.

60. *Id.*

61. Lasch, *supra* note 57, at 11.

62. Leslie Capace Auberger, Note, Blakely v. Washington *and the Retroactivity Question*, 44 BRANDEIS L.J. 655, 662 (2006). "It . . . appears that the prospective-only technique . . . is a permanent fixture . . . ." Haddad, *supra* note 30, at 419.

63. *Linkletter*, 381 U.S. at 629.

64. *See* Lasch, *supra* note 57, at 12–24 (discussing various critiques of the *Linkletter* decision). "[C]ommentators have 'had a veritable field day' with the *Linkletter* standard, with much of the discussion being 'more than mildly negative.'" Teague v. Lane, 489 U.S. 288, 303 (1989) (citing Beytagh, *supra* note 49, at 1558) (quotations omitted).

Justice Black, the author of the dissenting opinion in *Linkletter*.[65] Justice Black argued that the *Mapp* rule should be applied retroactively to Linkletter and others similarly situated while they are "languishing in jail" as a result of evidence used unconstitutionally to convict them.[66] Justice Black began his critique of the Court's decision by pointing out that, even though Linkletter's offense was committed after that of Mapp, Linkletter's conviction was affirmed while Mapp was set free.[67] Dissatisfied with such a result, dictated only by the difference in timing between the two cases,[68] Justice Black proclaimed that the Court's decision in *Linkletter* was "arbitrary and discriminatory."[69]

In addition to his dissatisfaction with the Court's disparate treatment of similarly situated defendants, Justice Black was also concerned that the *Linkletter* court was pushing its constitutional limits by venturing into the sphere of legislative lawmaking.[70] As Justice Black explained, by announcing prospective-only rules of constitutional criminal procedure, the Court was making law rather than interpreting it.[71] The criticism of the Court's decision in *Linkletter* decision did not end with Justice Black's dissent.[72]

Professor Mishkin, an often-cited commentator in the field, criticized *Linkletter* for abandoning Blackstonian theoretic principles.[73] Mishkin believed that Blackstone's declaratory theory

65. *Linkletter*, 381 U.S. at 640 (Black, J., dissenting). Justice Black was also joined in his dissent by Justice Douglas. *Id.*

66. *Id.* at 645 (Black, J., dissenting).

67. *See id.* at 641. Mapp committed her offense on May 23, 1957; Linkletter committed his offense more than a year later, on August 16, 1958. *Id.* Mapp's conviction became final on March 23, 1960, almost three years after her offense was committed; Linkletter's conviction became final on March 21, 1960, about one year and seven months after his offense was committed. *Id.*

68. Justice Black criticized the Court for "perpetrat[ing] a grossly invidious and unfair discrimination against Linkletter simply because he happened to be prosecuted in a State that was evidently well up with its criminal court docket." *Id.* at 642. As Justice Black explained, Linkletter's conviction became final prior to the decision in *Mapp* simply because Louisiana's appellate procedure was faster than that of Ohio. *Id.* at 641. Had Louisiana's appellate procedure been slower, or Ohio's faster, Linkletter's conviction would not be "final" prior to *Mapp*, and Linkletter would be afforded the benefit of the exclusionary rule on direct review. *Id.* "The Court offers no defense based on any known principle of justice for discriminating among defendants who were similarly convicted by use of evidence unconstitutionally seized." *Id.*

69. Linkletter v. Walker, 381 U.S. 618, 629 (1965).

70. *Id.* at 644.

71. *Id.*

72. *See infra* notes 75–97 and accompanying text.

73. Paul J. Mishkin, *Foreword: The High Court, the Great Writ, and the Due Process*

played a "symbolic role" in American jurisprudence and was necessary to uphold the "prestige and power" of American courts.[74] Mishkin also argued that the *Linkletter* decision would not only discourage attorneys from advocating on behalf of their clients by presenting novel legal theories, but would also interfere with the courts' abilities to replace "unsound or outmoded legal doctrines."[75]

Professor Haddad, another legal scholar, also attacked the Court's decision in *Linkletter*, arguing that the *Linkletter* retroactivity approach should be abandoned.[76] Haddad criticized the Court for applying the new retroactivity approach to the rule announced in *Mapp* but not to those announced in *Gideon* and *Griffin*.[77] Haddad especially criticized the *Linkletter* majority for its lack of and misuse of precedent.[78] As Haddad explained, there were multiple cases decided prior to *Linkletter* where the Court applied new constitutional rights retroactively.[79] Additionally, there were multiple instances where the Court invoked the common law automatic retroactivity doctrine to cases finally decided prior to the

of Time and Law, 79 HARV. L. REV. 56, 65 (1965) (discussing *Linkletter's* abandonment of Blackstone's declaratory theory of law).

74. *Id.* at 62–63 (discussing the symbolic significance of Blackstone's theory of law). "[T]he 'declaratory theory' expresses a symbolic concept of the judicial process on which much of courts' prestige and power depend." *Id.* at 62. "This is the strongly held and deeply felt belief that judges are bound by a body of fixed, overriding law, that they apply that law impersonally as well as impartially, that they exercise no individual choice and have no program of their own to advance." *Id.* "If the view be in part myth, it is a myth by which we live and which can be sacrificed only at substantial cost." *Id.* at 62–63. While professor Mishkin criticized the Court's rejection of Blackstone's declaratory theory of law, he nonetheless agreed with the ultimate result reached by the Court in *Linkletter*. *Id.* at 102 ("The Linkletter result . . . seems quite sound–indeed, in part for reasons which its rationale tends to obscure.").

75. *Id.* at 60–61 (discussing the effects of prospective judicial lawmaking). "When a new rule of law is given purely prospective effect, it . . . does not determine the judgment awarded in the case in which it is announced. It follows that if parties anticipate such a prospective limitation, they will have no stimulus to argue for change in the law."
Id. "[T]he recognition of even a substantial possibility of such limitation will tend to deter counsel from advancing contentions involving novelty or ingenuity and will lead them to focus on other aspects of their cases." *Id.* at 61.

76. Haddad, *supra* note 30, at 440–41 (concluding that prospective-only application of new rules of constitutional criminal procedure should be "banished").

77. Haddad, *supra* note 30, at 423.

78. Haddad, *supra* note 30, at 425.

79. *Id.*

announcement of the new rule.[80] Lastly, like Justice Black, Haddad was also dissatisfied with the Court's disparate treatment of similarly situated defendants.[81] For these and other reasons, Haddad concluded that the *Linkletter* retroactivity approach "should be banished."[82]

Unpersuaded by the sharp criticism, the U.S. Supreme Court continued to expand the *Linkletter* rule in *Johnson v. New Jersey*[83] and *Stovall v. Denno*.[84] In *Johnson*, the Court held that the rules announced in *Escobedo v. Illinois*[85] and *Miranda v. Arizona*[86] would not be applied retroactively.[87] In *Stovall*, the Court held that the *Linkletter* rule would apply not only to cases on collateral review but also to cases pending on direct review.[88] Thus, the Court continued to apply and expand the *Linkletter* rule in other important criminal procedure decisions throughout the 1960s.[89]

As the Court noted in *Danforth*, "application of the *Linkletter* standard produced strikingly divergent results."[90] A few years after the Court's decision in *Stovall*, Justice Harlan responded to these inconsistencies and attacked the *Linkletter* approach through his dissenting opinion in *Desist v. United States*[91] and concurring opinion in *Mackey v. United States*.[92] Justice Harlan argued that in a short period of time, the *Linkletter* approach generated a large

80. *Id.*

> Many of these decisions represented conscious rejections of suggestions that a prospective-only doctrine be recognized in the area of constitutional criminal procedure. The fact that such suggestions were not deemed worthy of comment by any majority opinion weighs heavily against a suggestion that the Court believed that prospective-only treatment could be accorded some constitutionally required procedural safeguards but not the one involved in the particular case before the Court.

Id.

81. *Id.* at 438 ("There is something offensive about the notion that the Supreme Court of the United States, like the sometimes-just, sometimes-generous vineyard owner, can bestow its favors upon whomever it pleases.").

82. *Id.* at 441.

83. 384 U.S. 719 (1966).

84. 388 U.S. 293 (1967).

85. 378 U.S. 478 (1964).

86. 384 U.S. 436 (1966).

87. *Johnson*, 384 U.S. at 721.

88. *Stovall*, 388 U.S. at 300–01.

89. *See* Danforth v. Minnesota, 128 S. Ct. 1029, 1037 n.8 (2008).

90. *Id.* at 1037.

91. 394 U.S. 244, 256 (1969) (Harlan, J., dissenting).

92. 401 U.S. 667, 675 (1971) (Harlan, J., concurring).

number of "incompatible rules and inconsistent principles."[93] Justice Harlan further proclaimed that the *Linkletter* approach had created "doctrinal confusion" and "must be rethought."[94] Despite the criticism, the Court continued to apply the *Linkletter* retroactivity approach for another twenty years.[95]

3. Retroactivity "Rethought": Griffith v. Kentucky *and* Teague v. Lane

In the 1987 decision of *Griffith v. Kentucky*,[96] the Court finally started to "rethink" the *Linkletter* approach, as was urged by Justice Harlan in *Desist* and *Mackey*.[97] *Griffith* rejected the *Linkletter* retroactivity rule for cases on direct review and held that new rules of constitutional criminal procedure would apply retroactively to all cases pending on direct review or not yet final.[98]

Two years later, in *Teague v. Lane*,[99] the Court reaffirmed *Griffith* and completely rejected the *Linkletter* approach to retroactivity.[100] Under *Teague*, new rules[101] of constitutional criminal procedure would not apply retroactively to cases on collateral review unless the case falls under one of two exceptions: (1) when the new rule places certain kinds of conduct "beyond the power of the criminal law-making authority to proscribe . . . ." and (2) when the new rule is a "watershed" rule of criminal procedure without which the likelihood of an accurate conviction would seriously be diminished.[102] As such, *Teague* established a new standard for determining whether new rules of constitutional criminal procedure apply retroactively.

93. *Desist*, 394 U.S. at 258 (Harlan, J., dissenting).
94. *Id.*
95. Bosse, *supra* note 28, at 31.
96. 479 U.S. 314 (1987).
97. 401 U.S. at 676–77 (Harlan, J., concurring); 394 U.S. at 258 (Harlan, J., dissenting).
98. *Griffith*, 479 U.S. at 328.
99. 489 U.S. 288 (1989).
100. *Id.* at 311–13. Although *Teague* was a plurality opinion, it was quickly adopted by the majority of the Court in *Penry v. Lynbaugh*, 492 U.S. 302, 305 (1989).
101. A "new rule" is one that "breaks new ground or imposes a new obligation on the States or the Federal Government." *Teague*, 489 U.S. at 301. In other words, "a case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant's conviction became final." *Id.*
102. *Id.* at 311–12.

4. The Court's Final Word: Danforth v. Minnesota

The latest development in the retroactivity jurisprudence was *Danforth v. Minnesota*, where the Court was asked to determine whether *Teague* is binding on state courts in post-conviction proceedings.[103] As the Court noted, neither *Linkletter* nor *Teague* constricted the states from developing and adopting a broader retroactivity approach for state post-conviction proceedings.[104] Furthermore, *Teague* was not developed to further state goals, but rather to address the goals of federal habeas review and minimize federal interference in state criminal convictions.[105] As *Danforth* concluded, *Teague* "does not in any way limit the authority of a state court, when reviewing its own state criminal convictions, to provide a remedy for a violation that is deemed 'nonretroactive' under *Teague*."[106] Thus, states are now free to develop their own approach for determining the retroactivity of new rules of constitutional criminal procedure.[107]

B. Development and History of Minnesota's Retroactivity Doctrine

In *Danforth v. State*, the Minnesota Supreme Court provided a brief overview of the history and development of Minnesota's retroactivity doctrine.[108] There, the supreme court traced Minnesota's retroactivity jurisprudence to its 1977 decision of *State v. Olsen*.[109] However, an even earlier Minnesota case discussing the retroactivity of new rules of constitutional criminal procedure in

103. Danforth v. Minnesota, 128 S. Ct. 1029 (2008). Although a majority of states did not interpret *Teague* as binding on state courts, three states, Minnesota, Oregon, and Montana, were under the impression that *Teague* was binding on state courts. *Id.* at 1042 n.17.

104. *Id.* at 1038. "A close reading of the *Teague* opinion makes clear that the rule it established was tailored to the unique context of federal habeas and therefore had no bearing on whether States could provide broader relief in their own postconviction proceedings than required by that opinion." *Id.* at 1039. The Court also noted that because *Teague* was a statutory decision interpreting a federal statute, it cannot be read as binding on state courts. *Id.* at 1040.

105. *Id.* at 1041.

106. *Id.* at 1042.

107. Lasch, *supra* note 57, at 43. As the Court noted in *Danforth*, the majority of states have recognized that *Teague* was not binding on state postconviction proceedings. 128 S. Ct. at 1042. However, most states continue to apply the *Teague* approach "out of convenience." Lasch, *supra* note 57, at 42.

108. 761 N.W.2d 493, 495–97 (Minn. 2009).

109. *Id.* at 496 (referring to State v. Olsen, 258 N.W.2d 898, 907 n.15 (Minn. 1977)).

some detail is the court's 1965 decision of *State v. Richter*.[110]

The issue before the court in *Richter* was whether *Mapp*, decided in 1961, applied retroactively to a 1951 conviction obtained through a guilty plea.[111] Anticipating the U.S. Supreme Court's decision on the retroactivity of *Mapp*,[112] the *Richter* court appeared hesitant to issue an opinion on the matter.[113] Nonetheless, the court provided a thorough analysis, expressly rejecting Blackstone's declaratory theory of law and stating that the retroactivity of *Mapp* would be decided based on public policy considerations.[114] As the court explained, "we do not subscribe to the philosophy that *Mapp* was the law in 1951."[115] The *Richter* court also distinguished *Mapp* from the U.S. Supreme Court's decisions in *Griffin* and *Gideon*, explaining that the new rules announced in those cases are applied retroactively because they have a direct impact on the reliability of a defendant's trial and on the determination of his innocence or guilt.[116]

The exclusionary rule announced in *Mapp*, on the other hand, does not affect the reliability of the defendant's trial and was designed primarily for the purpose of deterring police misconduct.[117] Writing that retroactive application of *Mapp* would disturb a reliably obtained conviction and have no deterrent effect on police misconduct, the *Richter* court concluded that *Mapp* would not be applied retroactively in that case.[118]

110. 270 Minn. 307, 133 N.W.2d 537 (1965).

111. *Id.* at 307–08, 133 N.W.2d at 537–38.

112. *Id.* at 310, 133 N.W.2d at 539. Decided in February of 1965, the *Richter* court noted that the U.S. Supreme Court had granted certiorari in *Linkletter v. Walker*. *Id.* at 310, 133 N.W.2d at 539. The Court decided *Linkletter v. Walker* less than four months later, in June of 1965. 381 U.S. 618 (1965).

113. *Richter*, 270 Minn. at 310, 133 N.W.2d at 539 ("So much has been written on the retroactivity of *Mapp* we hesitate to further burden the bench and bar with protracted speculation on how that question will ultimately be resolved."). The court nonetheless went on to provide a detailed, in-depth analysis of the retroactivity of *Mapp*. *See id.* at 311–17, 133 N.W.2d at 540–43.

114. *Id.* at 312–13, 133 N.W.2d at 540–41. "[W]e do not feel compelled to adopt the views expressed by Blackstone in his Commentaries concerning the effect of overruling previous decisions. . . . [T]he application of the Mapp rule must be determined by a consideration of broad public policy." *Id.* at 312–13, 133 N.W.2d at 540–41.

115. *Id.* at 313, 133 N.W.2d at 541.

116. *Id.* at 315, 133 N.W.2d at 542.

117. *Id.* at 316, 133 N.W.2d at 542.

118. *Id.* at 316–17, 133 N.W.2d at 542–43. "[W]e do not feel moved to adopt a rule which can not now have any deterrent effect, but would result only in granting a belated trial to a prisoner who has confessed in open court the details

During the period immediately following the Court's decision in *Linkletter*, the Minnesota Supreme Court addressed the issue of retroactivity of new rules of constitutional criminal procedure a few times, although only summarily in a number of cases.[119] In *State ex rel. Rasmussen v. Tahash*, the court addressed the retroactivity of *Escobedo v. Illinois* in some detail.[120] Relying, among other cases, on *Linkletter* and *Richter*, the Minnesota Supreme Court held that *Escobedo* would not apply retroactively unless directed otherwise by the U.S. Supreme Court.[121] As in *Richter*, the court based its decision on the determination that *Escobedo*, unlike *Gideon* and *Griffin*, does not play a role on the reliability of the defendant's conviction and, as such, should not be applied retroactively.[122] In *Bultman v. State*[123] and *State ex rel. Boswell v. Tahash*,[124] the Minnesota Supreme Court decided that, based on *Linkletter*, *Mapp* would not be given retroactive effect.

While *Linkletter* was cited by the Minnesota Supreme Court in numerous decisions,[125] the court did not formally adopt the *Linkletter* retroactivity standard until its *State v. Hamm* decision in 1988.[126] In *Hamm*, the Minnesota Supreme Court held that the Minnesota Constitution guarantees criminal defendants a twelve-person jury in misdemeanor prosecutions and struck down a fifteen-year-old statute, providing for a six-person jury, as unconstitutional.[127] Next, citing *State v. Olsen*,[128] the court formally adopted the *Linkletter-Stovall* retroactivity standard and held that the new twelve-person jury rule would not apply retroactively.[129]

of the offense with which he was charged." *Id.* at 316, 133 N.W.2d at 543.

119. *See* Bultman v. State, 290 Minn. 511, 513, 187 N.W.2d 117, 118 (1971) (disposing of the retroactivity issue in one short paragraph); State *ex rel.* Boswell v. Tahash, 278 Minn. 408, 417, 154 N.W.2d 813, 819 (1967) (disposing of the retroactivity issue in one short paragraph).

120. 272 Minn. 539, 141 N.W.2d 3 (1966).

121. *Id.* at 546–47, 141 N.W.2d at 9.

122. *Id.* at 545–46, 141 N.W.2d at 8–9.

123. 290 Minn. 511, 513, 187 N.W.2d 117, 118 (1971).

124. 278 Minn. 408, 417, 154 N.W.2d 813, 819 (1967).

125. *See supra* notes 114–27 and accompanying text.

126. 423 N.W.2d 379, 386 (Minn. 1988).

127. *Id.* at 386.

128. 258 N.W.2d 898, 907 n.15 (Minn. 1977).

129. *Hamm*, 423 N.W.2d at 386. The court stated: "In . . . *Olsen* . . . we cited with approval various United States Supreme Court cases which set forth a test for determining whether a decision should be applied prospectively. We adopt the criteria set forth in those cases and hold that the criteria have been met in this case." *Id.*

Under the *Linkletter-Stovall* approach, courts would decide the retroactivity of new rules of constitutional criminal procedure by considering three factors: "(1) the purpose of the decision, (2) reliance on the prior rule of law, and (3) the effect upon the administration of justice of granting retroactive effect."[130]

As the court noted in *Danforth*, Minnesota courts continued to follow the *Linkletter-Stovall* retroactivity approach until 2004.[131] That year, the Minnesota Supreme Court issued its decision in *O'Meara v. State*,[132] where the court abandoned the *Linkletter-Stovall* retroactivity approach and adopted the *Teague* retroactivity approach in its place.[133] The *O'Meara* court explained that it was "compelled to follow the lead of the Supreme Court in determining" the retroactivity of new rules of federal constitutional criminal procedure.[134] Finally, in its most recent decision of *Danforth v. State*, the Minnesota Supreme Court rejected the U.S. Supreme Court's invitation to abandon *Teague* and instead formally adopted the *Teague* retroactivity standard for state post-conviction proceedings.[135] The Minnesota Supreme Court's final decision in *Danforth* is described in detail below.

III. THE *DANFORTH* DECISION

In the summer of 1995, Stephen Danforth was charged with first-degree criminal sexual conduct for allegedly molesting J.S., a six-year-old boy.[136] During a videotaped interview, J.S. stated that he was sexually abused by Danforth.[137] The videotape of the interview was admitted into evidence, and the jury was allowed to watch the videotape at trial.[138] Danforth was subsequently found guilty,[139] and his conviction was affirmed on appeal.[140]

130. Danforth v. State, 761 N.W.2d 493, 495 (Minn. 2009).
131. *Id.* at 496.
132. 679 N.W.2d 334 (Minn. 2004).
133. *Id.* at 339–40.
134. *Id.* at 339.
135. *Danforth*, 761 N.W.2d at 500.
136. State v. Danforth, 573 N.W.2d 369, 372 (Minn. Ct. App. 1997). At the time, Danforth was a convicted pedophile and a disbarred attorney. *Id.*
137. *Id.*
138. *Danforth*, 761 N.W.2d at 495.
139. *Danforth*, 573 N.W.2d at 372. Danforth was originally sentenced to 216 months imprisonment. *Id.*
140. *Id.* at 378. However, the Minnesota Court of Appeals remanded the case for resentencing, and Danforth's sentence was increased to 316 months imprisonment on remand. Danforth v. State, 718 N.W.2d 451, 454 (Minn. 2006),

In 2004, eight years after Danforth's conviction, the U.S. Supreme Court issued its decisions in *Crawford v. Washington*[141] and *Blakely v. Washington*.[142] Following these holdings, Danforth filed a post-conviction petition, seeking relief under the new rules established therein.[143] Danforth's petition was denied because, as the court found, *Crawford* and *Blakely* did not apply retroactively to Danforth's case.[144] The court of appeals affirmed, and the Minnesota Supreme Court granted review solely on the *Crawford* issue.[145]

On review, Danforth argued that the supreme court is free to apply a retroactivity standard broader than *Teague*, and that *Crawford* applies to his case under state retroactivity principles.[146] Danforth also argued that *Crawford* applies to his case even under the *Teague* retroactivity standard.[147] The Minnesota Supreme Court rejected Danforth's arguments, holding that (1) it was required to follow the *Teague* retroactivity standard, and (2) *Crawford* did not apply to Danforth's case retroactively under *Teague*.[148] Danforth appealed to the U.S. Supreme Court, which granted certiorari and reversed and remanded. The Court held that state courts are not required to follow *Teague* and may develop their own standards for determining the retroactivity of new rules of federal constitutional criminal procedure.[149] Danforth's case then returned to the Minnesota Supreme Court.[150]

On remand, Danforth argued that the *Teague* standard should be abandoned, and that the Minnesota Supreme Court should return to the *Linkletter-Stovall*[151] approach or adopt Nevada's

cert. granted in part, 550 U.S. 956 (2007), *rev'd*, 128 S. Ct. 1029 (2008).

141. 541 U.S. 36 (2004). *Crawford* held that, under the Confrontation Clause of the U.S. Constitution, out-of-court *testimonial* statements made by a witness must be excluded from evidence unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. *Id.* at 59.

142. 542 U.S. 296 (2004). *Blakely* held that an upward departure from a statutory maximum sentence, based on findings made by a judge rather than a jury, is unconstitutional under the Sixth Amendment of the U.S. Constitution. *Id.* at 301–05.

143. *Danforth*, 718 N.W.2d at 455.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. Danforth v. Minnesota, 128 S. Ct. 1029, 1046 (2008).

150. Danforth v. State, 761 N.W.2d 493 (Minn. 2009).

151. *See supra* notes 131–133 and accompanying text.

Colwell[152] approach for deciding whether new rules of federal constitutional criminal procedure apply retroactively.[153] The Minnesota Supreme Court framed the issue on remand as "what standard [it] should use to decide whether new rules of federal constitutional criminal procedure will be applied retroactively."[154] The Minnesota Supreme Court ultimately rejected Danforth's arguments and affirmed its prior decision, holding that Minnesota will continue to use the *Teague* standard for deciding whether new rules of constitutional criminal procedure apply retroactively to state criminal convictions.[155]

After reviewing the changes in Minnesota's retroactivity doctrine over the last half of the twentieth century,[156] the supreme court considered the policy concerns underlying *Teague*.[157] The *Danforth* court first admitted that not all policy considerations leading to the U.S. Supreme Court's decision in *Teague* necessarily transfer to state courts addressing state post-conviction challenges.[158] As such, the *Danforth* court conceded that *Teague*'s concerns of interfering with state convictions do not play a role in state post-conviction proceedings.[159] However, the *Danforth* court stated that *Teague*'s second policy consideration, finality of state convictions, is equally applicable to state post-conviction proceedings.[160] Quoting *Teague*, the court highlighted the importance of finality of state convictions: "Without finality, the criminal law is deprived of much of its deterrent effect."[161] The

152. Colwell v. State, 59 P.3d 463, 471 (Nev. 2002). *Colwell* is a modified version of the *Teague* retroactivity standard, which broadened *Teague's* first exception and eliminated the "watershed" rule requirement from *Teague's* second exception. *Id.* at 472.

153. *Danforth*, 761 N.W.2d at 498.

154. *Id.* at 495.

155. *Id.* at 500.

156. *Id.* at 495–96. The supreme court explained that until recently, Minnesota followed the *Linkletter-Stovall* standard set out by the U.S. Supreme Court. *Id.* at 495. In 2004, however, Minnesota abandoned *Linkletter* and adopted the standard set out by the U.S. Supreme Court in *Teague*. *Id.* at 496. Since that time, Minnesota has consistently followed the *Teague* retroactivity standard. *Id.* at 496–97.

157. *Id.* at 497–98.

158. *See id.* at 498 ("[W]e acknowledge that one of the policy concerns underlying *Teague*-that federal habeas courts not excessively interfere with state courts-is absent when a state court is reviewing state convictions").

159. *Id.*

160. *Id.* The *Danforth* court also noted that other states have recognized an interest in finality of state convictions. *Id.*

161. *Id.* (quoting Teague v. Lane, 489 U.S. 288, 309 (1989)). The court also

court further explained that the *Teague* standard not only supports Minnesota's interest in finality of criminal convictions, but is also a "bright line rule."[162]

Finally, the supreme court explained its reasoning for rejecting Danforth's invitation to adopt an alternative retroactivity approach.[163] The court first considered and rejected a return to the *Linkletter-Stovall* test.[164] The court explained that a return to *Linkletter-Stovall* would overburden Minnesota's criminal justice system with re-litigation of old cases under new rules.[165] The court also rejected Nevada's *Colwell* standard advocated by Danforth because *Colwell*, according to the court, would lead to the same finality problems as those created by *Linkletter-Stovall*.[166] The court concluded by stating that cases announcing new rules under *Teague* are rare not because *Teague* is "unyielding or unworkable," but because "such cases are rare."[167] Thus, in *Danforth*, Minnesota formally adopted the *Teague* retroactivity standard for state post-conviction proceedings.[168]

IV. ANALYSIS OF THE *DANFORTH* DECISION

A. Minnesota Should "Rethink" its Retroactivity Approach

As the U.S. Supreme Court emphasized in *Danforth*, *Teague* was not intended to limit states' authority to grant relief in state post-conviction proceedings.[169] Rather, the purpose of *Teague* was to

relied on the Florida Supreme Court's reasoning that "an absence of finality casts a cloud of tentativeness over the criminal justice system, benefiting neither the person convicted nor society as a whole." *Id.* at 498–99 (quoting Witt v. State, 387 So.2d 922, 925 (Fla. 1980)).

162. *Id.* at 499. *But see* Lasch, *supra* note 57, at 50–51 (suggesting that *Teague* may work against finality by giving defendants an incentive to prolong their direct appeal as long as possible in hopes that a beneficial new rule will be announced before their conviction becomes final); *see also* Strauss, *supra* note 32, at 1222 (stating that the U.S. Supreme Court's current retroactivity doctrine is "incoherent" and "difficult to apply").

163. *Danforth*, 761 N.W.2d at 499.

164. *Id.*

165. *Id.*

166. *Id.* The court also noted that no other state has followed Nevada's *Colwell* approach. *Id.*

167. *Id.* at 500. The court appeared to agree that *Teague* is a strict rule, but nonetheless believed that "eventually there may be a new rule" that will apply retroactively under *Teague*. *Id.*

168. *Id.*

169. Danforth v. Minnesota, 128 S. Ct. 1029, 1041 (2008).

address the goals of federal habeas review and minimize federal interference with state criminal convictions.[170] Thus, *Teague* has "no bearing on whether States could provide broader relief in their own post-conviction proceedings than required by that opinion."[171]

The Minnesota Supreme Court agreed that federal habeas concerns are irrelevant for the purposes of state post-conviction proceedings.[172] However, the court refused to abandon *Teague* due to its concern for finality and fear of a major disruption in the state criminal justice system.[173] While the court's reasoning adequately addresses the State's interest in finality, it completely neglects another important state interest—to correct "miscarriages of justice."[174]

One purpose of state post-conviction proceedings, which is nonexistent in federal habeas review, is to provide an "*initial* forum" for raising and litigating various constitutional violations.[175] It is during state post-conviction proceedings—not federal habeas review—that issues of innocence and fairness of proceedings are initially litigated.[176] By focusing solely on finality, the Minnesota Supreme Court ignored the "liberty-ensuring" function of state post-conviction review.[177] In other words, the Minnesota Supreme Court failed to "weigh the importance" of finality against other state interests, such as fairness and accuracy of convictions, as was suggested by the U.S. Supreme Court in *Danforth*.[178] To ensure that Minnesota's retroactivity doctrine serves the needs of Minnesota's post-conviction review, the Minnesota Supreme Court should adopt a less stringent test than *Teague*, one that will allow the goals of state

170. *Id.*

171. *Id.* at 1039.

172. *Danforth*, 761 N.W.2d at 498. "[W]e acknowledge that one of the policy concerns underlying *Teague*–that federal habeas courts not excessively interfere with state courts–is absent when a state court is reviewing state convictions . . . ." *Id.*

173. *Id.* at 498–500. Although the court expressed great concern for the possibility of never-ending litigation under *Linkletter*, it failed to provide a single example of any such major disruptions during the twenty-seven years that *Linkletter* was in force in Minnesota. *See id.* at 495–96.

174. Hutton, *supra* note 1, at 444 (discussing state postconviction remedies).

175. Lasch, *supra* note 57, at 44 (discussing state postconviction remedies).

176. *See* Hutton, *supra* note 1, at 441 (discussing state postconviction remedies).

177. *See id.* "For the states to parrot the federal courts' focus on finality and waste of resources as reasons not to afford careful scrutiny in the postconviction setting is incongruous." *Id.* at 443 (footnotes omitted).

178. *See* Danforth v. Minnesota, 128 S. Ct. 1029, 1041 (2008).

post-conviction review to be accomplished.[179]

B. Review of Alternatives to Teague

Having determined that *Teague* is too restrictive for state post-conviction proceedings, the next question is what retroactivity test the Minnesota Supreme Court should adopt in its place.[180] One of the easiest options is to simply return to the pre-*Linkletter*, common law approach of automatic retroactivity.[181]

In 1969, only four years after the Court's decision in *Linkletter*, Professor Haddad urged the Court to abandon *Linkletter* and return to the common law approach of automatic retroactivity.[182] Haddad argued that *Linkletter* was incorrectly decided, departed from precedent, and discriminated between similarly situated defendants.[183] Because Haddad was responding to the Court's decision in *Linkletter*, his argument was only targeted at the U.S. Supreme Court, not state courts addressing state post-conviction challenges.[184] However, judging by his concluding remarks, it appears that Professor Haddad believed that prospective-only application of new rules of constitutional criminal procedure should never have been an option anywhere in the country.[185] Professor Haddad's suggestion to return to the common law approach of automatic retroactivity has recently been renewed, but aims specifically at state courts in state post-conviction proceedings.[186]

In his detailed analysis of the U.S. Supreme Court's decision in *Danforth*, Professor Lasch urges state courts to adopt the standard of automatic retroactivity of new rules of constitutional criminal procedure.[187] In his article, Lasch argues that unlike the *Teague* approach, full retroactivity of new rules offers several benefits for

179. *See* Hutton, *supra* note 1, at 457 (discussing states' reaction to *Teague*).
180. *See id.* at 451.
181. *See id.* at 440–41.
182. *Id.* Although Haddad published his article twenty years prior to the Court's decision in *Teague*, his proposal to return to the common law approach of automatic retroactivity is still an available option today.
183. *Id.*
184. *See id.*
185. *See id.* at 441 ("'Non-retroactivity' should be banished from the constitutional criminal procedure scene.").
186. *See infra* notes 190-99 and accompanying text.
187. Lasch, *supra* note 57, at 43 ("Among the various options [of retroactivity standards] from which state courts may choose, full retroactivity is far and away the best choice . . . .").

the states.[188] For example, Lasch points out that certain claims, such as "ineffective assistance of counsel" and government's failure to share exculpatory evidence, are almost always litigated on post-conviction review rather than on direct review.[189] By adopting the *Teague* retroactivity standard, state courts forego an opportunity to participate in the doctrinal development of certain constitutional claims, and, as a result, leave the U.S. Supreme Court as the sole authority for the development of this area of the law.[190] By returning to full retroactivity, on the other hand, state courts would not only play a direct role in the development of post-conviction remedies, but also advocate for and protect state interests by influencing the development of federal constitutional law.[191]

Additionally, Professor Lasch argues that a return to full retroactivity would eliminate the problem of inequality, which *Teague* addressed but did not fully resolve.[192] As Lasch explains, the *Teague* retroactivity doctrine still discriminates between defendants whose cases are on direct review and those whose cases are on collateral review.[193] For example, two codefendants convicted on the same day may be treated differently under *Teague* simply because one codefendant happened to finalize his direct review process faster than the other.[194] Lasch concludes that states can easily avoid such "accidents of time" by abandoning *Teague* and returning to full retroactivity of new rules of constitutional criminal procedure.[195] Thus, as demonstrated above, one option available for the Minnesota Supreme Court to consider is a return to the common law approach of automatic retroactivity.[196]

Writing four years after the Court's decision in *Teague*,

188. *See infra* notes 193–99 and accompanying text.
189. Lasch, *supra* note 57, at 51.
190. *Id.* at 52.
191. *Id.* at 52–53.
192. *Id.* at 48.
193. *Id.* at 48–49.
194. *Id.* at 49. Lasch provides an even more striking hypothetical by comparing two codefendants, one of whom appeals his conviction based on a frivolous claim, while the other does not file an appeal at all. *Id.* at 50–51. If a new rule is announced after the conviction of the latter becomes final, but while the conviction of the former is still on direct appeal, only the defendant who abused the appellate process will benefit from the new rule. *Id.* Such a result conflicts with the states' interest in finality of convictions by giving litigants an incentive to prolong their litigation in hopes that a new, favorable rule will be announced while their case is still on direct review. *See id.*
195. *Id.*
196. *See supra* notes 183–198 and accompanying text.

Professor Hutton suggested two other alternatives, or retroactivity standards, that states may consider as replacements for *Teague*.[197] One of these alternatives is the return to the *Linkletter-Stovall* approach.[198] Hutton admits that the *Linkletter-Stovall* approach leads to disparate treatment of similarly situated defendants.[199] Nonetheless, she argues that the *Linkletter-Stovall* retroactivity standard, unlike *Teague*, allows state courts to focus on protection and enforcement of constitutional rights, which is the purpose of state post-conviction proceedings.[200]

The second alternative proposed by Professor Hutton is a "pure prospectivity/retroactivity" approach.[201] Under this approach, new rules of constitutional criminal procedure would be applied either to all defendants challenging their convictions or to none at all.[202] As Hutton explains, this approach has its risks and benefits.[203] If new rules are applied retroactively to every defendant challenging his conviction, all defendants would be treated similarly, and the timing of a particular defendant's appeal process would not dictate whether he should benefit from the new rule.[204] While pure retroactivity will eliminate the arbitrary discrimination between defendants,[205] it carries the risk of disturbing the states' criminal justice systems each time a new rule of constitutional criminal procedure is announced.[206]

Pure prospectivity, on the other hand, will dissuade defendants from challenging their convictions on constitutional grounds because, even if successful, they will not benefit from the new rule.[207] Additionally, prospective application of new rules is inconsistent with the purpose of state post-conviction review because it allows for continued incarceration of defendants whose convictions were based on constitutional violations.[208] Nonetheless,

197. Hutton, *supra* note 1, at 451–57.
198. *Id.* at 452–55.
199. *Id.* at 454.
200. *Id.* at 454.
201. *Id.* at 455–57.
202. *Id.* at 455.
203. *Id.* at 455–57.
204. *Id.* at 456. This is also one of the arguments made by Justice Black in his dissenting opinion in *Linkletter v. Walker*. 381 U.S. 618, 642 (1965) (Black, J., dissenting); *see also supra* notes 67-73 and accompanying text.
205. *See infra* note 207 and accompanying text.
206. Hutton, *supra* note 1, at 457.
207. *Id.* at 456.
208. *Id.*

the *Linkletter-Stovall* approach and the "pure prospectivity/retroactivity" approach are two more alternatives that the Minnesota Supreme Court may adopt to replace *Teague*.

Another alternative to the *Teague* retroactivity standard was adopted by the Nevada Supreme Court in *Colwell v. State*.[209] In *Colwell*, the Nevada Supreme Court considered whether it should adopt *Teague* or an alternative approach for determining the retroactivity of new rules of constitutional criminal procedure.[210] Unlike the Minnesota Supreme Court in *Danforth*,[211] the Nevada Supreme Court concluded that *Teague* is not binding on Nevada courts in state post-conviction proceedings[212] and ultimately rejected the strict application of *Teague*.[213]

In its analysis, the *Colwell* court reviewed the retroactivity approach set forth by the U.S. Supreme Court in *Teague*, observing that the *Teague* retroactivity rule is "sound in principle."[214] However, the *Colwell* court also emphasized that the policy considerations responsible for the Court's decision in *Teague*, including finality of convictions, are only partially relevant to state courts' task of addressing state post-conviction challenges.[215] Additionally, the *Colwell* court observed that the U.S. Supreme Court has applied *Teague* so narrowly that new rules of constitutional procedure are rarely applied on collateral review.[216] Having made these determinations, the *Colwell* court decided to retain *Teague*, but with significant modifications.[217]

These modifications involved broadening the scope of *Teague*'s two exceptions.[218] As such, under *Colwell*, new rules of constitutional criminal procedure will apply retroactively if the case falls under one of the following two exceptions: "(1) if the rule

209. 59 P.3d 463 (Nev. 2002).
210. *Id.* at 469–72.
211. Danforth v. State, 718 N.W.2d 451, 454 (Minn. 2006).
212. The *Colwell* court explained that besides the minimum protections offered by the two exceptions in *Teague*, *Teague* is not binding on Nevada state courts. *Colwell*, 59 P.3d at 470. "[W]e are free to choose the degree of retroactivity or prospectivity which we believe appropriate to the particular rule under consideration, so long as we give federal constitutional rights at least as broad a scope as the United States Supreme Court requires." *Id.* at 471 (quoting State v. Fair, 502 P.2d 1150, 1152 (Or. 1972)) (quotations omitted).
213. *Id.* at 472.
214. *Id.* at 471.
215. *Id.*
216. *Id.*
217. *Id.* at 472.
218. *Id.* at 471–72.

establishes that it is unconstitutional to proscribe certain conduct as criminal or to impose a type of punishment on certain defendants because of their status or offense; or (2) if it establishes a procedure without which the likelihood of an accurate conviction is seriously diminished."[219] *Colwell*'s first exception is broader than *Teague*'s first exception in that it is not limited to cases involving "primary, private individual" conduct.[220] *Colwell*'s second exception is also broader than *Teague*'s second exception in that it does not require the new rule to be of "watershed" significance.[221] As such, *Colwell*'s second exception will allow retroactive application of a new rule if the new rule has a significant impact on the accuracy of a defendant's trial and conviction.[222] Having set out this modified version of *Teague* as Nevada's new retroactivity doctrine, the *Colwell* court stated the new approach will be both "fair and straightforward."[223]

As explained above, the Minnesota Supreme Court has a variety of alternatives that can be adopted in *Teague*'s place.[224] One option is to return to the common law approach of automatic retroactivity.[225] Two other available approaches are the *Linkletter-Stovall* standard or Hutton's "pure prospectivity/retroactivity" approach.[226] Finally, another available alternative is *Colwell*'s modified *Teague* standard.[227] As outlined below, the Minnesota Supreme Court should adopt *Colwell*'s modified *Teague* standard because it is responsive to both finality and accuracy of convictions, and, therefore, is a fair and balanced approach.[228]

C. Colwell*'s Modified Version of* Teague *is the Best Alternative for Minnesota*

From the options available, *Colwell*'s modified *Teague* standard is the best approach for Minnesota because it would allow for an equal balance between Minnesota's interest in finality of convictions on the one hand and fairness and accuracy of criminal

219. *Id.* at 472.
220. *Id.*
221. *Id.*
222. *Id.*
223. *Id.*
224. *See supra* notes 183–226 and accompanying text.
225. *See supra* notes 183–200 and accompanying text.
226. *See supra* notes 201–212 and accompanying text.
227. *See supra* notes 213–227 and accompanying text.
228. *See infra* notes 233–240 and accompanying text.

proceedings on the other. First, *Colwell*'s approach would address Minnesota's interest in finality of state convictions[229] and, if applied, would uphold the integrity of Minnesota's criminal justice system. As the *Colwell* court explained, the modified *Teague* approach incorporates *Teague*'s main rule that new rules of constitutional criminal procedure would generally not be applied retroactively in state post-conviction proceedings.[230] As such, *Colwell*'s modified *Teague* rule would not cause any major disruptions in Minnesota's criminal justice system, as was feared by the Minnesota Supreme Court majority in *Danforth*.[231] Contrary to the *Danforth* court's fears, new rules of constitutional criminal procedure would not necessarily be frequently announced, and, even when announced, would not necessarily be applied retroactively.[232]

Additionally, the modified *Teague* rule would not lead to inconsistent results, as was the case with *Linkletter-Stovall*, because the Minnesota Supreme Court could apply the modified *Teague* rule in a consistent manner and provide lower courts with guidance in a relatively short period of time. *Colwell*'s modified version of *Teague* would be beneficial to Minnesota's interest in finality of criminal convictions and would uphold the integrity of the state criminal justice system.

In addition to addressing finality of convictions, *Colwell*'s modified *Teague* approach would also address and improve the fairness and accuracy of criminal proceedings in Minnesota. *Colwell*'s major modification of the original *Teague* rule is that it broadens the scope of *Teague*'s two exceptions.[233] Most importantly, *Colwell* does away with the "watershed" rule requirement necessary for retroactive application under *Teague*.[234] The *Colwell* approach allows courts to simply determine whether a new rule has a significant impact on the accuracy and reliability of a trial rather than concerning themselves with whether the rule

229. Danforth v. State, 761 N.W.2d 493, 498 (Minn. 2009) (stating that finality of convictions is an important state interest).

230. Colwell v. State, 59 P.3d 463, 471–73 (2002) (adopting the general framework of *Teague*).

231. *See Danforth*, 761 N.W.2d at 501 (Anderson, J., dissenting) (stating that *Colwell's* modified version of *Teague* would not have an adverse effect on the state criminal justice system).

232. *See Colwell*, 59 P.3d at 473 (finding that the rule in question in Colwell's case was new, but would not be given retroactive effect).

233. *Id.* at 472.

234. *Id.*

qualifies as "watershed."[235] By focusing on accuracy, Minnesota courts would be addressing the fairness of trials and innocence of criminal defendants, and, as a result, be furthering the goals and purpose of Minnesota's post-conviction review.[236] Since *Teague* was not designed to further such state objectives, Minnesota's current retroactivity doctrine does not adequately address these important state interests. Because *Colwell*'s modified version of *Teague* allows for a healthy balance between the competing interests of finality and fairness, it is the best retroactivity approach for the State of Minnesota.

V. CONCLUSION

The federal retroactivity doctrine has undergone some major changes during the last half of the twentieth century. While the current federal retroactivity doctrine was designed specifically to address federal interests and applications, the Minnesota Supreme Court has adopted the federal approach and, most recently, rejected the U.S. Supreme Court's invitation to adopt an approach that best suits state goals and objectives. In formally adopting the *Teague* retroactivity standard for state post-conviction proceedings, the Minnesota Supreme Court neglected to address the important state interests of fairness and accuracy of state criminal convictions. The Minnesota Supreme Court's focus on finality and its decision to formally adopt *Teague* will most likely preclude retroactive application of new rules to most, if not all, cases on state post-conviction review.[237] To create a healthy balance between the competing interests of fairness and finality of convictions, and to allow the goals of state post-conviction review to be accomplished, the Minnesota Supreme Court should rethink its retroactivity approach and replace *Teague* with a more balanced test that adequately addresses all of these important state interests.

235. *See id.* ("[I]f accuracy is seriously diminished without the rule, the rule is significant enough to warrant retroactive application.").

236. *See* Hutton, *supra* note 1, at 441 (discussing state postconviction remedies).

237. *See* Danforth v. State, 761 N.W.2d 493, 500–02 (Minn. 2009) (Anderson, J., dissenting). Justice Anderson acknowledged the criticism that "the *Teague* rule has been applied so strictly by the U.S. Supreme Court 'that decisions defining a constitutional safeguard rarely merit application on collateral review.'" *Id.* (quoting *Colwell*, 59 P.3d at 471).